

Response from the Northern Ireland Committee of the Irish Congress of Trade Unions to the Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill.

25th February 2022

The Irish Congress of Trade Unions is the trade union federation on the island of Ireland representing the collective interests of 800,000 people, 200,000 of whom live and work in Northern Ireland.

ICTU is the largest civic society organisation in Northern Ireland and is the voice for the trade union movement under the direction of the Northern Ireland Committee of the ICTU (NIC ICTU).

NIC ICTU fully supports the Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill, although it is not the ban on zero-hours contracts, which the New Decade, New Approach agreement had promised, at page 41, *Appendix 1 - Programme for Government*.

NIC ICTU do, however, have a concern with one aspect of the Bill as drafted, which we will draw your attention to later in this document in the hope that it can be suitably amended.

NIC-ICTU believe that this Bill, once amended to address our concern, will have a positive impact on the lives of many vulnerable workers, including women, young and migrant workers, who tend to be disproportionately affected by zero-hours contracts (ZHC).

At the same time, it maintains flexibility for employers, but not the flexibility to transfer risk to workers, exert unjustified control over them and have them at the employer's beck and call, as is the situation in many cases today.

The Bill is a move in the direction of creating a more balanced, modern and flexible employment model, where workers and employers can agree the type of flexibility that suits both parties.

NIC ICTU regard the Bill as timely, as it aims to bring Northern Ireland into line with the widely held view that the swing of the pendulum, over at least the past 30 years, towards increasing casualisation of working people's terms and conditions of employment has gone too far, with increasing adverse social and economic consequences, such as the dramatic rise in in-work poverty, even when wages are supported by state benefits.

The provisions in the Bill fit within the new EU Directive on Transparent and Predictable Working Conditions, which member states are currently transposing.

The Bill also chimes with the sentiments of 'Good Work: The Taylor Review of Modern Working Practices', which, as you are aware, was commissioned by a Conservative

Government. The report was published in 2017, but, unfortunately, we are still waiting for the Government's promised legislative response. An employment rights bill featured in the 2019 Queen's Speech but was never brought forward.

NIC ICTU would highlight the example of the Republic of Ireland, where very similar legislation to this Bill was introduced in 2018, with banded hours and compensations for workers who are called into work but not provided with any. It must be noted that the Republic saw no adverse economic consequences after those provisions became law. Businesses did not close, and employers did not dismiss workers. Flexibility in employment still exists. Those who wish to remain on non-guaranteed or zero-hours contracts can do so. Others who require a level of certainty about their income receive it by being granted guaranteed hours.

NIC ICTU recalls all the dire warnings of economic doom that preceded the introduction of the national minimum wage in the UK, but, after it was introduced, the warnings proved entirely false. We believe that it will be the same with this Bill.

As can be seen from the example of the Republic of Ireland, introducing the Bill will not damage good employers here. It will protect them from being undercut by unscrupulous employers who seek competitive advantage not through innovation or increases in productivity, but through reduced labour costs by exploiting their workers regardless of the human cost to those workers and their families.

The Bill aims to create a level playing field as well as guaranteeing a predictable income to workers currently forced to accept ZHCs. Predictable income is probably the most important aspect of work, as it is the basis for planning life. Not knowing what you will be earning from day to day can be a life lived in fear and anxiety, particularly if you have a family depending on your wage. In such a precarious lifestyle, you are unable to budget, get a mortgage or a bank loan, you struggle to pay bills and rent, you are unable to plan for life outside of work if you have childcare responsibilities or other caring responsibilities. Fluctuating hours mean that it is difficult to claim in-work benefits, and for many people, when they do get benefits, they are delayed thus intensifying the hardship. In the workplace, you must take whatever work you are offered for fear that you will not be offered another shift. You suffer all sorts of mistreatment, as you are afraid that, if you complain, the shifts will stop. That is the situation that many ZHC workers find themselves in today in Northern Ireland. In addition to this ZHC workers may lose out on basic employment rights protections, because they fail to qualify as employees, lack the necessary continuity of service or because their employer takes advantage of their uncertain employment status to evade employment rights obligations.

Alongside income insecurity ZHC workers suffer from under-employment and low pay. Recent research by the TUC identified that across the UK median pay for zero hours workers was £8.17 an hour, well behind the average for all employees of £12.25.¹

¹ TUC Insecure work - Why decent work needs to be at the heart of the UK's recovery from coronavirus
<file:///H:/ZHC%20Bill/Insecurework.pdf>

According to the Nevin Economic Research Institute (NERI), over one in three workers in Northern Ireland are employed in a more insecure form of employment, than that offered by the traditional standard. 20% of workers earn below the real living wage. The accommodation and food sector is particularly at risk of low pay, with 75% of workers earning below the real living wage.²

NIC ICTU believes that insecure work, such as ZHCs, is not only bad for the workers involved, but is bad for the economy too. The OECD has found that countries with policies and institutions that promote job quality, job quantity and greater inclusiveness perform better than countries where the focus of policy is predominantly on enhancing (or preserving) market flexibility.³

The TUC's latest analysis of official figures shows that across the UK 3.6 million people remain in insecure work.⁴

It means that one worker in nine has to endure insecure work.

The case is often made that many people prefer casual contracts. Sometimes it is argued that this gives workers the flexibility to balance their work and other responsibilities.

But polling conducted for the TUC among those shows that for most workers this flexibility is purely theoretical. It tells us that:

- Employers are increasingly scheduling and cancelling shifts at the last minute, with 84 per cent of zero-hours contract workers offered work at less than a day's notice
- The main reason workers take on zero-hours work is because it is the only work available
- Insecure work is pushing risk onto workers: more than half of insecure workers, including three quarters of people on ZHCs had their hours cut due to the pandemic.

Although NIC ICTU do not have much in the way of reliable historical data on zero-hours contracts we can say that there was a noticeable step change after the financial crisis, in which we saw a marked increase in these types of contracts in the UK, as measured by the Office for National Statistics (ONS). As the explanatory and financial memorandum to the Bill sets out, we know that somewhere in the range of 1.5% to 2% of employees in Northern Ireland are employed on zero-hours contracts. It is worth noting, however, that the data that we use has a chequered history and is still being updated: In February 2022, a new method of attempting to calculate the number of zero-hours contracts was put in place. The problem is that a lot of people who were on zero-hours contracts did not know that they were on zero-hours contracts. They probably referred to them as casual contracts. There is also a prevalence of zero-hours contracts among some groups of workers, particularly migrants, that are, too often, beyond the reach of the sample that the Office for National Statistics uses to make its calculation.

² NERI Decent Work in Northern Ireland: The challenge of insecurity and low pay

https://www.neriinstitute.net/sites/default/files/research/2019/neri_research_inbrief_low_pay_and_insecure_lw_final.pdf

³ OECD (2017). Economic Surveys: United Kingdom 2017, [www.oecd-ilibrary.org/sites/eco_surveys-gbr-2017-](http://www.oecd-ilibrary.org/sites/eco_surveys-gbr-2017-en/1/2/1/index.html?itemId=/content/publication/eco_surveys-gbr-2017-en&csp_=af42fd060842c10b19dd161a0d87fa81&itemIGO=oecd&itemContentType=book#sec1-00001)

[en/1/2/1/index.html?itemId=/content/publication/eco_surveys-gbr-2017-](http://www.oecd-ilibrary.org/sites/eco_surveys-gbr-2017-en/1/2/1/index.html?itemId=/content/publication/eco_surveys-gbr-2017-en&csp_=af42fd060842c10b19dd161a0d87fa81&itemIGO=oecd&itemContentType=book#sec1-00001)

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⁴ TUC's Jobs and Recovery Monitor Polling for the TUC by GQR. Representative online survey of working Britain: adults 16+ who are in full- or part-time employment, weighted to national statistics on gender, age, region, social grade, ethnicity, work status, sector, and experience of furlough. Total sample n=2523. Fieldwork: 29th January – 16th February 2021

NIC ICTU does not have sectoral breakdowns of the data for Northern Ireland purely because the sample size here that is used by the ONS would be too small for that to be statistically significant. There is a detailed UK-wide breakdown, however, and there is not a huge amount of evidence to suggest why it would be significantly different in Northern Ireland, once you make a few minor adjustments for broader industrial structure. This was identified in Duncan McVicar's Knowledge Exchange Seminar Series paper produced for the Assembly in 2017.⁵

The one thing that we can say is that, of the UK regions, Northern Ireland has the lowest prevalence of zero-hours contracts. That can be seen as a good thing in and of itself, but, when we look at where zero-hours contracts tend to occur in the economy, we see that the biggest predictor of zero-hours contracts is the size of the firm involved in the employment. Northern Ireland has up to half the level of employment in large firms — 250 employees and over — so the structure of Northern Ireland's labour market means that it was always destined to have a lower incidence of zero-hours contracts. If you were to adjust Northern Ireland to make it look slightly more like other regions, you would likely see that incidence increase.

That speaks to the broader point here, which is that the fact that there is a lower level of zero-hours contracts at present does not mean that that situation will continue into the future. If anything, there are greater risks of an increase in the use of zero-hours contracts in the Northern Ireland economy.

The fact that zero-hours contracts are very common in areas such as social care, which we forecast to be one of the biggest growth areas in employment over the next number of years. Also, if we are hoping that Northern Ireland's productivity will improve, a key aspect of that will come from larger firms having a greater role in our economy. Therefore, the risk is definitely there.

NIC ICTU regards it as important to point out that the majority of people who are on zero-hours contracts are not hired on such contracts; they tend to transition to them with the same employer. In many cases, people are with an employer for up to two years before they transition onto a zero-hours contract. We are finding our way through one of the biggest labour market disruptions that has been faced in the past number of years due to the pandemic, and we are staring down at the next big change that will be necessary: adapting to climate change. That great churn in the labour market heightens the risk of transitions to zero-hours contracts becoming more prevalent. Yes, their prevalence is lower in Northern Ireland, but there is an opportunity here to shut the barn door before the horse bolts.

Between 2017 and 2020, NIC-ICTU, along with Ulster University, the Migrant Rights Centre Ireland and the Community Intercultural Programme ran a Peace IV project to assist vulnerable migrant workers mainly in the agri-food sector here. The project, which was also

⁵ Zero Hours Contracts, Job Quality and Impacts on Workers, Duncan McVicar, Queen's Management School, Queen's University Belfast, 25/1/2017
http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series6/mcvicar250117.pdf

supported by the Executive Office, gathered evidence of the mistreatment and exploitation of large numbers of vulnerable newcomer migrant workers. They were vulnerable as they were new to the country. They were unaware of their rights. They had limited English and no wider family support networks in this country to rely upon.

As mentioned in the oral evidence provided to the Committee for the Economy by the NIC ICTU delegation, on 16th February 2022, the project recorded widespread misuse of ZHCs in the agri-food sector in Northern Ireland. Some employers adopted the use of ZHCs as a normal business model in an effort to undercut competitors. The majority of their workforces were vulnerable migrant workers employed on ZHCs who did not know from day to day whether they would have work, and if they did get working hours, paid at national minimum wage rates, they were unsure how long they would be each day. This business model was used to control the workforce as workers were afraid to complain about mistreatment and racial abuse, denial of their employment rights, or to take health leave when they were sick. This later concern undoubtedly contributed to the spread of Covid-19 within these workplaces.

The project witnessed how the prevalence of ZHC in the agri-food sector, affecting directly employed workers and those employed through agencies, excluded people with caring responsibilities, mainly women, from the workplace. The project also recorded the prevalence of discrimination against pregnant women whose working hours evaporated on telling the employer of their status.

NIC ICTU recognises that the agri-food sector is not the only place where zero-hours contracts have been misused and turned into a normal business model. They are rife in hospitality and leisure and in healthcare and now, even in the education sector.

Currently, with the outsourcing of social care, ZHCs have become the predominant arrangement in social care provided by private contractors. There are no proper collective bargaining arrangements to tackle it. Although the trade unions have a commitment from the Minister for Health for their proposal to establish a social care forum, it has not met yet. NIC ICTU believes that the Bill is a necessary baseline for that work.

ZHCs create major problems for retention of skilled workers, workforce planning, care standards and quality and quantum of care. The use of zero-hours contracts has always created a very high attrition rate across this sector, and the pandemic has exacerbated that. Many care workers in this sector in particular have simply moved on to something with fewer risks and better pay, at a time when we know that the commitments of the social care sector mean that we have to expand.

Remarkably, it has been 12 years since the publication of 'Fair Society, Healthy Lives', the ground-breaking Marmot review into health inequality in England. The review findings were endorsed by the health service here. Two of the six key recommendations to tackle growing health inequality across society are; "Create fair employment and good work for all" and, "Ensure healthy standard of living for all".

Professor Marmot gave social care as a particular example in that review, summarising that quality care results are achieved by the decent treatment of the social care workforce.

Today, we have a two-tier workforce delivering a critical component of healthcare in an area that has to expand. The Bill can start to take us in the right direction with those two core Marmot recommendations, not only in social care but across all sectors. Looking at the Marmot review, it is clear that, if we are ever to turn around health inequalities, it is not solely about workers who are in work at the moment, it is about the future of the workforce and the future of individuals and groups of people in our society. Those two are intimately linked.

Returning to NIC ICTU's concern with one aspect of the Bill as drafted. Clause 14 states that if zero-hours contract workers are placed on a band, they are no longer defined as zero-hours workers. However, if that is the case, according to the Bill, they will no longer be protected from the ban on exclusivity clauses or compensated for being called into work and not being given any hours.

Clause 14 of the Bill, states,

Application to zero hours workers

14. After Article 112O of the 1996 Order (as inserted by section 13) insert—

“Application of this Part to zero hours workers

112P. If a zero hours worker (within the meaning of Part IVA) is placed in a band of weekly working hours in accordance with this Part, that person ceases to be a zero hours worker.”.

The Explanatory and Financial Memorandum states,

If a zero hours worker is placed in a band of weekly working hours, they cannot then be construed as being on a zero hours contract. This clause confirms that.

This would clearly mean that the protections such as those for Zero hours worker called in but not given work, and the unenforceability of “Exclusivity terms”, no longer apply to a banded worker. For example, the Zero hours worker called in but not given work, article states

59B.—(1) This Article applies where a zero hours worker is called in to work but—

(a) is not given any work, or

(b) is given less than one hour's work.

If this wording remains, NIC ICTU are deeply concerned that, you could have a worker placed on a band, conceivably the lowest band, 3 to 6 hours, called into work on a particular day and then denied hours when they arrive. While those who chose to remain on zero-hours contracts are given work. This could be used by bad employers to penalise workers who seek to access the protections of the Bill. We ask the Committee to look at amending the Bill to close that potential loophole.

NIC ICTU recognises that even if this Bill, with our suggested amendment, becomes law some unscrupulous employers will still seek to find ways around its protections.

To avoid this legislative change would be required to change the current archaic legal differences in employment status. All workers, including agency workers, ZHC workers and casual workers, should be entitled to the same floor of employment rights currently enjoyed by employees. In addition to this legal protection from unfair dismissal should be a right from the first day of employment.

NIC ICTU is of a view that the current employment rights infrastructure does not adequately support access to workplace justice, particularly for vulnerable workers. The focus should be rebalanced towards enforcing employment rights rather than simply settling disputes. The precarity of working life means that for workers, the pursuit of workplace justice can be a daunting process, for fear of upsetting employers or recruitment agencies.

NIC ICTU believes that this Bill on its own will not solve the many problems experience by ZHC workers. Trade union access to workplaces remains the most efficient method of protecting workers' rights, ensuring workplace justice and improving relations. The commitments on page 44, Appendix 2 - Programme for Government, of *New Decade, New Approach*, particularly on collective bargaining, will be important to addressing exploitation in the workplace. We would be keen to see these commitments in carried through into the next Programme for Government.